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SENATE BILL 1042

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

William H. Payne

AN ACT

RELATING TO THE ALBUQUERQUE-BERNALILLO COUNTY WATER UTILITY
AUTHORITY; CHANGING CONDEMNATION POWERS OVER CERTAIN PRIVATE
FACILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 72-1-10 NMSA 1978 (being Laws 2003,
Chapter 437, Section 1, as amended) is amended to read:

"72-1-10. WATER UTILITY AUTHORITY--CREATED--MEMBERSHIP--
ADMINISTRATION OF UTILITY.--

A. The "Albuquerque-Bernalillo county water utility
authority" is created. The membership of the board of
directors of the authority shall consist of seven members. The
municipal members shall be the mayor and three city councilors
appointed by the Albuquerque city council. The county members
shall be three county commissioners appointed by the Bernalillo

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1 county board of county commissioners. A city councilor member
2 shall designate another city councilor to serve in the member's
3 absence. A county commissioner member shall designate another
4 county commissioner to serve in the member's absence. The
5 mayor shall designate the chief executive officer of the
6 municipality, a city councilor or a county commissioner to
7 serve in the mayor's absence. City councilors shall serve one-
8 year terms at the city council president's discretion. County
9 commissioners shall serve one-year terms at the county
10 commission [~~chairman's~~] chair's discretion. The authority is
11 subject to the state Procurement Code and other applicable
12 state laws. The authority is a public body politic and
13 corporate, separate and apart from the city of Albuquerque and
14 Bernalillo county. The authority is a political subdivision of
15 the state.

16 B. The authority:

17 (1) shall set policy and regulate, supervise
18 and administer the water and wastewater utility of Albuquerque
19 and Bernalillo county, including the determination and
20 imposition of rates for services;

21 (2) is granted all powers necessary and
22 appropriate to carry out and effectuate its public and
23 corporate purposes, including the authority to adopt procedural
24 rules; and

25 (3) is authorized to use city or county

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1 procurement processes or to contract with the city or county to
2 further its public and corporate purposes.

3 C. The authority may acquire, maintain, operate,
4 contract for, condemn or protect water and wastewater
5 facilities, except that an acquisition of a privately owned
6 water or wastewater facility shall be accomplished only through
7 a purchase agreement and not by condemnation. The city of
8 Albuquerque and Bernalillo county may delegate any additional
9 power or duty conferred by Sections 3-27-2 and 3-27-3 NMSA
10 1978, that is not inconsistent with the provisions of this
11 section, to the authority to exercise and administer.

12 D. In exercising its power to acquire, maintain,
13 operate, contract for or condemn water and wastewater
14 facilities, the authority shall not act so as to physically
15 isolate and make nonviable any portion of the water or
16 wastewater facilities, within or outside of Bernalillo county.

17 E. The authority may adopt resolutions and rules
18 necessary to exert the power conferred by this section.

19 F. For the purposes of acquiring, maintaining,
20 operating, contracting for, condemning or protecting water and
21 wastewater facilities, the jurisdiction of the authority
22 extends within and outside of the boundaries of Bernalillo
23 county to the territory physically occupied by the water and
24 wastewater facilities [~~and to privately owned water and~~
25 ~~wastewater facilities interconnected to the utility system~~].

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1 The authority may:

2 (1) acquire, maintain or contract for [~~or~~
3 ~~condemn~~] facilities for the collection, treatment and disposal
4 of wastewater;

5 (2) condemn private property for the
6 construction, maintenance and operation of wastewater
7 facilities; and

8 (3) acquire, by agreement, and maintain
9 [~~contract for or condemn for use as part of the utility system~~]
10 or operate privately owned water and wastewater facilities used
11 for the collection, treatment and disposal of wastewater of the
12 authority or its customers.

13 G. The authority is subject to:

14 (1) the limitations imposed by Section 72-1-9
15 NMSA 1978 regarding water rights obtained or water rights
16 condemned pursuant to a water development plan;

17 (2) the provisions of the Eminent Domain Code;
18 and

19 (3) the provisions of Chapter 72 NMSA 1978
20 regarding any change to the point of diversion or the place or
21 purpose of use of any water right to any place selected by the
22 authority in order to make the water available to the
23 authority.

24 H. The authority is liable to the condemnee
25 pursuant to the provisions of the Eminent Domain Code for the

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1 value of a water right as well as the market value of real
2 property to which the water right is appurtenant if:

3 (1) the authority condemns water rights,
4 either within or outside of the boundaries of Bernalillo county
5 that are appurtenant to real property that has been in active
6 agricultural operation; and

7 (2) the condemnation of the water right by the
8 authority requires the permanent retirement from agricultural
9 operation of some or all of the real property to which the
10 water rights are appurtenant.

11 I. The authority is not subject to the jurisdiction
12 of or approval from the public regulation commission. The
13 authority is not subject to the provisions of the Public
14 Utility Act. The authority is granted a water use planning
15 period not to exceed forty years as set forth in Section 72-1-9
16 NMSA 1978.

17 J. The city of Albuquerque or Bernalillo county
18 may, by ordinance or resolution, grant the authority a
19 franchise for the operation, construction and maintenance of
20 the utility system and for the use and rental of rights of way
21 in exchange for consideration.

22 K. The authority may issue utility system revenue
23 bonds and obligations pursuant to the Public Securities Short-
24 Term Interest Rate Act for acquiring real and personal property
25 needed for the utility system and for extending, enlarging,

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1 renovating, repairing or otherwise improving water facilities
2 and wastewater facilities or for any combination of these
3 purposes; provided that, no bonds or obligations shall be
4 issued for the purpose of directly or indirectly acquiring a
5 privately owned water or wastewater facility through
6 condemnation. The authority may issue revenue anticipation
7 notes with maturities not exceeding thirteen months upon terms
8 approved by the board of directors. The authority may pledge
9 irrevocably net revenues from the operation of the utility
10 system for payment of the principal, premiums and interest on
11 the revenue bonds or other obligations. It is unlawful to
12 divert, use or expend money received from the issuance of
13 utility system revenue bonds for any purpose other than the
14 purpose for which the utility system revenue bonds were issued.
15 Obligations, including bond anticipation notes, issued pursuant
16 to the Public Securities Short-Term Interest Rate Act shall be
17 sold pursuant to the terms of that act. Utility system revenue
18 bonds:

19 (1) may have interest, appreciated principal
20 value or any part thereof payable at intervals or at maturity
21 as the authority determines;

22 (2) may be subject to prior redemption at the
23 authority's option at such time and upon such terms and
24 conditions with or without the payment of a premium as
25 determined by the authority;

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1 (3) may mature at any time not exceeding fifty
2 years after the date of issuance;

3 (4) may be serial in form and maturity or may
4 consist of one bond payable at one time or in installments or
5 may be in another form as determined by the authority;

6 (5) shall be sold for cash at above or below
7 par and at a price that results in a net effective interest
8 rate that does not exceed the maximum permitted by the Public
9 Securities Act; and

10 (6) may be sold at a public or negotiated
11 sale.

12 L. The bonds authorized by the authority and their
13 income shall be exempt from all taxation by the state or its
14 political subdivisions.

15 M. The members of the board of directors of the
16 authority may adopt a resolution declaring the necessity for
17 the issuance of utility system revenue bonds or other
18 obligations and may authorize the issuance of utility system
19 revenue bonds or other obligations by an affirmative vote of a
20 majority of all members of the board of directors of the
21 authority. Utility system revenue bonds and the resolution
22 authorizing their issuance shall not be subject to the approval
23 of the public regulation commission pursuant to Section 3-23-3
24 NMSA 1978 or subject to voter approval pursuant to Section
25 3-23-2 NMSA 1978.

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